

ATTORNEY DOCKET: AUS920000291US1

PATENT

**Section II: REMARKS**

It is respectfully requested that the changes as noted above in Section I be made to the present application.

In the above-referenced Office Action which was mailed on 9/26/03, Claims 1-4, 6-16 and 18-28 were rejected under 35 USC 103(a) as being unpatentable over Del Sesto et al (U. S. Patent 6,530,084) in view of Lett (U. S. Patent 5,539,822), and claims 5 and 17 were rejected under 35 USC 103(a) as being unpatentable over Del Sesto et al (U. S. Patent 6,530,084) in view of Lett (U. S. Patent 5,539,822) in still further view of "Official Notice of well known business practices". The above noted rejections are respectfully traversed. However, in order to further the prosecution of the present application, and without waiving any of applicant's rights to argue the allowability of the originally presented claims in a subsequent appeal or other proceeding in the event that the Examiner does not concur that the present amendment places the application in condition for allowance, applicant has herein amended the claims by adding clarifying language as required to place them in condition for allowance.

More specifically, it is noted that the present application includes claims 1-28 with claims 1, 15 and 27 being independent claims, claims 2-14 being ultimately dependent from claim 1, claims 16-26 being ultimately dependent from claim 15 and claim 28 being dependent upon claim 27. All of the independent claims, 1, 15 and 27, have herein been amended to add clarifying language to distinguish them from the cited references. Further, claims 8, 9, 21 and 23 have herein been cancelled with the substance of those claims being included in one or more of the remaining claims.

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With regard to the references, it is noted that Del Sesto discloses a broadcast signal containing an interactive application and broadcast data defining three separate time periods and controlling the execution timing of the interactive application by the broadcast receiver according to when the user chooses to start the application. The whole purpose of Del Sesto is to enable a selective execution of an interactive program during a specified and limited period of time or else the interactive application is retired. It is this very shortcoming to which the present invention is directed.

The present application discloses a method and means by which a software program product may be purchased and delivered to a viewer without regard to predetermined and limited time windows. In one embodiment, the program product being offered is downloaded prior to the presentation of a related commercial broadcast segment so that if a user selects to purchase the product, it is already downloaded and available. Thus the downloading does not need to be accomplished within predetermined time limits as taught by, and required by Del Sesto.

The Lett reference merely obtains input data from a viewer as for example in conducting a poll. Lett discloses a subscription television system where users may be polled by presenting downloaded template questionnaires to the viewers and receiving the viewer's input data. The system controller stores subscriber terminal identification data, transaction identification data to identify a template and transaction return data to identify a user's input. There is nothing that would correspond to a presentation stream that is segmented into feature segments and commercial segments as disclosed by the applicant. There is further nothing that would even correspond in broad terms with

downloading a program product being offered for purchase during a commercial segment, during a feature segment, as disclosed and claimed by applicant.

It is further noted that there is nothing in either reference that would suggest that a combination of the two references would be productive of anything or even that the two systems are compatible. Del Sesto deals with a selective execution of an interactive application by a viewer within predetermined time windows and Lett presents an input-soliciting questionnaire that is not selected by the viewer and does not need to be executed within predetermined time limits. Thus, it is submitted that the proposed combination of Del Sesto and Lett is not suggested by either of the references, and further that even a forced combination of Del Sesto and Lett would not render the present invention obvious.

There is no suggestion or nexus among the references to even suggest the total combination of elements and relationships as recited in the claims as herein amended. It is submitted that all inventions can be broken down into incremental individual parts and each incremental individual part can generally be found in published references. However, where there is no teaching or suggestion in any of the references for the **specific total combination** of elements **and relationships** among those elements, and especially when cited references are incompatible with each other, it is submitted to be inappropriate use applicant's own disclosure as a recipe, to find piecemeal prior art references for individual claim elements, and then to combine those references in a manner disclosed only by the applicant and not taught or even suggested in the references, in order to reject applicant's own claims.

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In order to further clarify the claims of the present application, all of the independent claims, and therefore all of the remaining dependent claims through ultimate dependence from one of the amended independent claims, have been amended to clearly recite the features of the present invention which are not taught or even suggested by the prior art references. More specifically, independent claims 1, 15 and 27 have herein been amended to be directed to, *inter alia*, providing a presentation signal to a viewer, with the presentation signal being selectively operable to effect a presentation including feature segments and interactive commercial segments, where the interactive commercial segments are operable for presenting software products available for purchase, and where the software products are downloaded during one of the feature (or non-commercial) segments.

Each of the remaining claims ultimately depends from one of the independent claims and includes all of the limitations of the independent claim from which it ultimately depend as well as even further limitations of the individual dependent claim. Claims 8, 9, 21 and 23 have been cancelled with the substance of those claims being included in one or more of the remaining claims. As herein amended, claims 1-7, 10-20, 22 and 24-28 are believed to be allowable under 35 USC 103(a) over Del Sesto and Lett, either taken individually or in combination.

Thus, it is submitted that claims 1-7, 10-20, 22 and 24-28, as herein presented, are believed to be in condition for allowance, an early notice of which is hereby requested. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting the allowance of this application, the Examiner is invited to contact the undersigned at the telephone number